



City of Deltona

2345 Providence Blvd.
Deltona, FL 32725

Minutes

City Commission

Thursday, February 23, 2017

5:30 PM

Deltona Commission Chambers

Special Commission Meeting

1. CALL TO ORDER:

The meeting was called to order at 5:30 p.m. by Mayor Masiarczyk.

2. ROLL CALL-CITY CLERK:

Present: 7 - Commissioner Alcantara
Commissioner Bradford
Commissioner Herzberg
Commissioner Honaker
Commissioner Soukup
Vice Mayor Nabicht
Mayor Masiarczyk

3. PLEDGE TO THE FLAG:

Mayor Masiarczyk led everyone in the pledge to the flag.

4. BUSINESS:

A. Discussion and plan of action for future legal representation for the City.

Mayor Masiarczyk stated the only item on the agenda is for future legal representation, acceptance of the Vose Law Firm's resignation and the Commission has several options.

Mayor Masiarczyk stated the first thing to decide is whether the Commission wants to look for an in-house attorney or for a law firm.

Commissioner Honaker stated he would like to look at both and not limit the options.

Commissioner Herzberg agreed with Commissioner Honaker and when looking at an in-house attorney she would like a financial cost breakdown of any additional staff.

Commissioner Soukup agreed to look at both and he mentioned that one city in particular has a firm but, an attorney from the firm is present at City Hall four days out of the week. He stated the Commission received an email from Larry Kent which shows the going rates for attorney services from the Florida Bar.

Commissioner Bradford agreed to look at both and she did try to research legal services in other cities of a comparable size for example the City of Melbourne who has a City Attorney, two Assistant City Attorneys and a Legal Assistant. She stated she could not find a City of our size that had only one City Attorney and if the Commission chooses to have an in-house attorney it needs to be staffed like the City of Melbourne.

Vice Mayor Nabicht agreed to look at both and the City has had both an in-house attorney and a firm. He stated with an in-house attorney the overall expenses are higher because the person may not have all the expertise needed and end up contracting out for those services such as a land attorney or a labor attorney. An in-house attorney has additional costs for things like health insurance and pension but, with a firm it can be written in their contract that they are responsible for their own health insurance, pension and contracting out for any other attorneys if needed.

Commissioner Soukup stated the City of St. Cloud has 49,000 residents, its own police and fire departments and their firm is paid \$175,000 a year but, an attorney is on City property four days a week.

Commissioner Alcantara agreed to look at both and that he understands the advantage to having a firm with a variety of specialties but, he would rather pay for that expertise when it is needed.

Commissioner Honaker requested the historical data cost when the City had in-house attorneys and for all other outside contracted attorneys to include health benefits and Florida Retirement System (FRS) because one attorney cannot have the expertise in all areas.

Commissioner Soukup requested to research all the surrounding cities and see what their total legal costs are.

Mayor Masiarczyk stated the general consensus is to go out for a Request For Qualifications (RFQ) for City Attorney services and Commissioner Honaker replied he did not agree to that.

City Manager stated it can be done concurrently and that there is no need to do a two-step approach because the attorneys/firms will send in their background, qualifications and their rate which will be their proposal.

Commissioner Herzberg requested before submitting the advertisement she would like some backup materials such as the City's historical legal costs, the current legal cost, the historical data of income brought in or programs that are income generated from all previous legal services, the amount of settlements done and the amount of lawsuits. Mayor Masiarczyk replied to do this simultaneously with getting the word out.

Commissioner Bradford stated it is important to hire a City Attorney that has worked for a municipality and she asked if there was any special training for that. Interim Assistant

City Attorney Segal-George replied there is now, she has 40 years of experience and when she started out there was not any. The Florida Bar has special certification in different areas of expertise and local government is one of them so younger lawyers can get a certification, they have to have a certain number of credit hours and take an exam to get that certification. For lawyers who have been practicing 30-40 years, they do not go and get that kind of certification but, it could be included in the RFQ.

Commissioner Honaker suggested requiring for an in-house attorney a minimum of five years' experience as an associate attorney in Florida, local government experience desired, salary and benefits negotiated per the contract, no dollar amount placed in the advertisement and it be for general legal counsel.

Mayor Masiarczyk asked if the Commission had a chance to look over the previous advertisement and if there was any objection to it and there was none.

Commissioner Alcantara stated he did not see the need for a firm.

Interim Assistant City Attorney Segal-George suggested that five years of experience is not sufficient and the City should ask for at least 10 years of experience.

Commissioner Herzberg stated she is good with the advertisement to include the updates such as the City's population. She asked where it would be advertised and to place it in as many places as possible.

Mayor Masiarczyk stated there is a short and long version of the advertisement which will need to be updated with current information. He suggested to use this as a template, send it out to the Commission for approval and to send it out to the League of Cities, Florida Bar, and other professional organizations. City Manager Shang stated the advertisement was previously placed on the International City/County Management Association (ICMA) website, the Florida Associations of Counties and the Florida League of Cities.

Mayor Masiarczyk asked if those advertising locations made sense and Commissioner Alcantara replied those four are good but, can more be done. Mayor Masiarczyk stated it can also be placed in the newspaper. Interim Assistant City Attorney Segal-George stated there are a few online websites that younger lawyers would know about that staff could find because the younger lawyers would look at those online resources.

Mayor Masiarczyk stated the City can place the ad with any of the free organizations or websites but, some like the Florida Bar are a considerable cost.

Commissioner Honaker suggested advertising in competing newspapers such as the Sanford Herald, The West Volusia Beacon, Orlando Sentinel and News Journal.

Mayor Masiarczyk suggested letting staff put together the cost for advertising in all the different locations and have Interim Assistant City Segal-George ask around that if an attorney were looking for a job where would they look and let the Commission know.

Vice Mayor Nabicht asked if the City should require a minimum amount of litigation experience and City Attorney Segal-George replied yes and to make sure they are admitted to the local federal district court and local district court of appeals because cases may be moved up to those courts and the attorney should be familiar with how they work and an attorney has to get special admissions for federal courts.

Commissioner Herzberg asked if the City would be accepting submissions via online or email and Mayor Masiarczyk replied he did not see why not.

Commissioner Soukup suggested when the time comes he would like to do one on one interviews and Mayor Masiarczyk replied that is his choice.

Commissioner Alcantara asked how much time the Commission will have to review the applications before a decision is made. Mayor Masiarczyk replied there will be a closing date for submittal of applications, the City can move forward with advertising but, from the closing date it is usually 10 days or so to put together a list for the Commission to review.

Commissioner Alcantara stated 10 days is not enough because he wants to do a lot of research and Mayor Masiarczyk replied that would be at the Commission's pleasure? Commissioner Alcantara asked if the Commission could receive the applications as they are submitted and Mayor Masiarczyk replied he did not see why not and then the Commissioners can do whatever background research they want to do individually.

Interim Assistant City Attorney Segal-George stated the applicants will be submitted, staff could determine who meets the minimum qualifications per the advertisement and once that determination has been made then all the Commissioners should be able to have the packet.

Mayor Masiarczyk stated if an application comes in and it does not meet the minimum qualifications that person will be notified, keeping in mind that an in-house attorney may not submit the same information that a firm would submit.

Commissioner Honaker stated that in his experience the applications cannot be released to the Commission because then it becomes public record. He suggested that the Commission not receive the applications until they have met the short list and he would like to provide staff with a timeline for things like the closing date to receive applications, a date to have the short list completed and a date the applications will be provided to the Commission.

Interim Assistant City Attorney Segal-George stated each step of the process can be brought back to the Commission in a meeting for direction on how to handle the next step but, as soon as the City receives the applications they are public record and people applying understand that. She stated the only way to look at this is that it is fair to do a review to determine that the applicants meet the minimum requirements and at that point the City Manager would need to bring those to the Commission to determine

where to go next. She stated the Commission does not have to predetermine how everything is going to happen but, the Commission needs to realize it is public record and you just don't fool around with public records.

Mayor Masiarczyk stated once the Commission gets a draft of the timeline, it will have a drop dead date for submission, then staff needs to review the applications for the minimum requirements, if an applicant does not meet the minimum requirements staff can place a note on those but still provide them to the Commission, the Commission does their research and then the Commission would meet and decide the short list.

Commissioner Soukup suggested the draft advertisement be sent to the Commission by Monday for review and City Manager Shang replied yes, that ad can be put together but, she may not have all the requested pricing put together.

Commissioner Soukup suggested to include the reason(s) why an applicant did not meet the minimum requirement and he asked that the Fowler firm provide a weekly or daily summary regarding what is being worked on, billable hours. Interim Assistant City Attorney Segal-George replied "sure" and she stated that the Fowler firm is willing to work for the same price as the Vose Law Firm, that it is currently budgeted for, and not ask for the \$250 an hour.

Mayor Masiarczyk asked if there was any objection to the Fowler law firm working for the City at the same rate as the Vose Law Firm.

Interim Assistant City Attorney Segal-George stated she needs to look at what the Vose Law Firm was working on and getting up to speed and then she will be able to provide whatever reporting you want, possibly the beginning of next week.

Commissioner Alcantara stated he objects, \$30,000 a month is a lot of money.

Interim Assistant City Attorney Segal-George stated the Fowler firm is making a commitment to be here a certain number of days and handle everything the City has with no outside counsel but, right now she cannot tell the Commission exactly what she will be working on until she gets up to speed.

Commissioner Alcantara stated he would agree to the Fowler firm's proposal.

After discussion, the Commission concurred to accept the proposal from the Fowler law firm to work for the City at the same rate as the Vose Law Firm.

Commissioner Bradford stated when the DeLand Police Department had an open position for their Police Chief there was an unbiased committee that received and vetted the applications, the applications did not go to the City.

Interim Assistant City Attorney Segal-George stated a fact finding committee is a sunshine committee and the City cannot create a committee outside of the sunshine. She stated even if the City hired a headhunter that can be challenged and will have

difficulty keeping the process confidential.

After discussion, the Commission concurred not to go through a headhunter.

Vice Mayor Nabicht suggested that after the applications close, the Commission should have a conversation whether or not the City has received enough applications and if it is determined it did not then the Commission can review the advertised requirements.

Commissioner Alcantara stated if once the advertisement has been distributed, can Commissioners send/share the ad with the public and Interim Assistant City Attorney Segal-George replied absolutely.

Commissioner Alcantara stated that if he sends the advertisement to someone who the Commission is interested in does he have to disclose that he sent that person the advertisement and Interim Assistant City Attorney Segal-George replied there is no disclosure requirement and the Commissioners can talk to and consult with whomever they want.

Commissioner Herzberg asked to make sure the qualifications are current within the advertisement and Mayor Masiarczyk replied staff is going to update both the short and long version of the ad and he gave an explanation of why there are two versions.

Commissioner Herzberg clarified that the residency requirement is clearly stated in the ad and Mayor Masiarczyk replied yes.

Mayor Masiarczyk opened and closed the public comment as there were none.

Mayor Masiarczyk summed up the discussion to include that the Commission agreed with the Fowler law firm working at the same rate as the Vose Law Firm did and that the Fowler law firm will provide a weekly update of what they are working on after they get up to speed.

Commissioner Honaker stated that the Commission did not agree on a closing date, the last time it was open until filled and Mayor Masiarczyk replied the ad cannot be placed until staff finds out the advertising timeline for the different organizations such as ICMA.

City Manager Shang stated she believed the question was how long the Commission wants to advertise it and to provide the guidelines. She stated she will have a draft ad on Monday at the workshop and she will try to get the pricing by then also.

After discussion, the Commission concurred to advertise for 60 days, to find out the publication cycles for the different media and that the ad can be placed on the free sites and internet sites.

Mayor Masiarczyk opened the public comments.

Santiago Avila, 710 Armadillo Dr., Deltona, suggested that if the Commission goes with

a firm somebody within that firm should have some type of connection to Deltona or a stake in the City.

Mayor Masiarczyk stated that is a good point, there was an exception made for the Vose Law Firm, the Charter is explicit, if the Commission wants to require a person to be a resident of the City and that the Commission cannot go against Charter.

Commissioner Herzberg stated the Charter reads "an in-house City Attorney has to live in the City within six months of hiring" and that needs to be enforced.

Commissioner Honaker stated he disagrees, there is a difference between an in-house attorney and a firm.

Commissioner Herzberg gave the example of former City Attorney Gary Cooney purchasing a condo in the City and not living in it and Mayor Masiarczyk stated "he took care of that."

Santiago Avila stated he is not trying to be impossible but, if the City has laws the City should not go around them.

Commissioner Alcantara stated some residents have questioned why the City hired a firm where none of their attorneys are residents of the City. Interim Assistant City Attorney Segal-George replied she looked at that specific provision and a firm is not bound by that requirement.

Deborah Suit-Green, 1531 Toluca Court, Deltona, spoke about her hopes that the Commission will look at minority firms and incorporate "us" in the search, that she is feeling upset over a couple of things, she requested a light on Hwy. 17-92 at Sun Rail, and to place a sign in that location. Mayor Masiarczyk stated he will talk to Mayor Garcia.

Deborah Suit-Green continued stating that there is a critical issue trying to make a U-turn back to Orange City over the St. Johns River Bridge. Mayor Masiarczyk replied that Vice Mayor Nabicht serves on the Transportation Planning Organization (TPO), it is out of the City's control but, the information can be passed along.

Deborah Suit-Green stated that Deltona, Ormond Beach and Daytona Beach are listed in AARP Magazine as places to retire and she questioned why anyone would want to retire here if there is so much infighting going on, she hopes the City can clean up its act and focus on the ideas that make Deltona a better and more marketable place. She stated the surrounding cities are getting fixed up for the end of the baby boomers and the companies coming to the area. Economic development should be the City's problem and not character assassination and name calling. She stated this is disappointing to her and she knows the City is better than this, it should be professional at all times and the Commission are role models at all times.

5. ADJOURNMENT:

There being no further business, the meeting adjourned at 6:40 p.m.

John C. Masiarczyk, Sr., MAYOR

ATTEST:

Joyce Raftery, CMC, MMC, CITY CLERK